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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,031	06/24/2003	David Alan Weyandt	1-679	1760

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT PAPER NUMBER

3632

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,031

Applicant(s)

WEYANDT, DAVID ALAN

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the second Office Action for serial number 10/603,031, Component Mounting Track, filed on June 24, 2003. Claims 11-19 are pending.

#### ***Claim Objections***

Claim 11 is objected to because of the following informalities: on line 11, "such" should be --said-- and on line 21 "facilitates" should be --is adapted to facilitate--. Appropriate correction is required.

Claim 18 is objected to because of the following informalities: on line 2, insert --to-- after "distal". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 11 and 15 recite the wall member being joined to the foot at the foot edge, but also recites the wall member being located between the foot edge and the

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mounting apertures. It is not understood how the wall member is positioned at the edge and also located between the edge and mounting apertures.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 18, line 2 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a member edge" in claim 18, lines 2-3 is intended to refer to "a member edge" in claim 15, line 18.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Admitted Prior Art of Fig. 1 (APA) in view of U.S. Patent 6,536,730 to Baer.

Regarding claim 11 (as best understood), APA discloses a mounting track comprising an elongate one-piece body of uniform transverse cross section including: an elongate flat foot (16) having opposed parallel foot edges and a plurality of mounting apertures (18) spaced along the foot and located adjacent a foot edge; an elongate wall member

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(14) joined to the foot (16) and extending perpendicularly away from the flat foot (16) at a foot edge, the wall member being located between the foot edge and mounting apertures (18); and an elongate component mounting rail (12) joined to the top of the wall member (14) and comprised of a flat base overlying the foot (16), two vertically offset mounting members (vertically extending side walls) each located above and to one side of the base. The APA does not teach the mounting apertures being located adjacent to the wall member (i.e. adjacent to the opposite foot edge) and the mounting rail base including a plurality of access apertures larger than and overlying the mounting apertures in the foot. Baer teaches a mounting member (100) comprising a top mounting portion (104) and a mounting foot (102), wherein the top mounting portion includes an aperture (114) larger than and overlying a foot mounting aperture (112) and wherein a mounting tool (146) and fastener (142) may be freely extended through the aperture (114) to drive the fastener through the mounting aperture (112). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mounting rail of APA to include access apertures in the portion of the rail base overlying the foot, the access apertures being larger than the foot mounting apertures, and positioning the foot mounting apertures adjacent to the wall member so as to be directly beneath the access apertures because one would have been motivated to allow for easier installation of the mounting track on the support surface as taught by Baer. Regarding claims 12 and 13, the APA in view of Baer does not teach the mounting apertures and the access apertures being rectangular. However it would have been obvious to have formed the mounting apertures and access apertures to be

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of various shapes including circular and rectangular since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Regarding claim 14, APA does not teach the wall member including a plurality of wall apertures; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the wall member to include mounting apertures because one would have been motivated to provide a means for securing the track to a vertical mounting surface.

### ***Response to Arguments***

Applicant's arguments filed 10/26/04 have been fully considered but they are not persuasive. Regarding applicant's argument that the APA nor Baer teach a support wall that acts to guide a fastening tool to a mounting aperture, examiner respectfully disagrees as the wall member of the modified mounting track of the APA in view of Baer (as described in the rejection above) is believed to be capable of performing this function. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case and contrary to

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applicant's assertion, the teaching and motivation are found in the references as stated in the rejection above. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 306-1113.

  
Naschica S. Morrison  
Patent Examiner  
Art Unit 3632  
1/3/05

  
ANITA KING  
PRIMARY EXAMINER